



TEXAS REAL ESTATE COMMISSION

Mailing Address: P.O. Box 12188 • AUSTIN, TEXAS • 78711-2188

Phone: (512) 465-3900 Fax: (512) 465-3910

November 4, 1997

Attorney General Dan Morales
P. O. Box 12548
Austin, Texas 78711-2548

RA-1026

RECEIVED
NOV 05 1997
OPEN RECORDS DIVISION
FILE # ML-39897-97
I.D. # 39897
pm 11/5/97

RE: Request for Opinion

Dear General Morales:

On November 3, 1997, the Texas Real Estate Commission (TREC) voted to request your opinion on questions related to the recent passage of Senate Bill 577, 75th Legislature, R.S. (1997). The legislation amended The Real Estate License Act, Article 6573a, Vernon's Texas Civil Statutes, (the Act) to require a person to register with TREC if the person, for another and for compensation, or with the intention or in the expectation or on the promise of receiving or collecting compensation, sells, buys, leases or transfers an easement or right-of-way in connection with telecommunication, utility, railroad, or pipeline service. The term "person" is defined in Section 2(5) of the Act as an individual or any other entity including a governmental subdivision or agency, a limited liability company, a limited liability partnership, or a corporation, foreign or domestic. Effective January 1, 1998, a person who engages in these activities without being registered, licensed as a real estate broker or salesperson, or exempt from the registration or licensing commits a criminal offense punishable by fine or imprisonment, or both.

A number of oil and gas companies, utilities and other interested parties have questioned whether Article 6573a applies to the acts of regular employees of a corporation or other business entity acquiring interests in real estate for the entity's own use, reasoning that since business entities such as corporations may only act through their officers and employees, the employees are not acting for another in the sense contemplated by the Act. The question also has been presented whether an entity registered under Section 9A of the Act may act for another person through the entity's regular employees other than the individual designated under Section 6(d) of the Act.

Prior to 1975, what was then Section 6 of the Act contained an exemption for salaried employees. Section 3 of the Act now contains exemptions for salespersons employed by a builder and for employees renting or leasing their employer's real property. By its rule, 22 TAC §535.53, TREC has considered corporate officers and managers of limited liability companies exempt from the Act if they do not receive a special compensation for their real estate related activities.

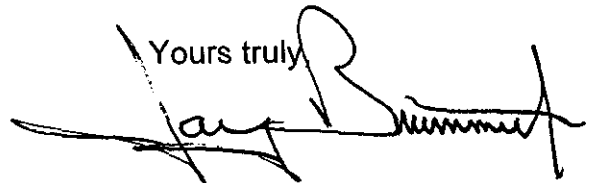


Attorney General Dan Morales
November 4, 1997
Page 2

The Texas Real Estate Commission respectfully requests your opinion on the following questions:

- (1) Do the licensing or registration requirements of Article 6573a, Texas Civil Statutes, apply to the regular employees of corporations and other business entities when the employees are acting to acquire or dispose of real estate for their employers?
- (2) If a corporation or other business entity is registered with the Texas Real Estate Commission under Section 9A of The Real Estate License Act, may the corporation lawfully perform the acts listed in Section 9A through its regular employees who are not registered, licensed as real estate brokers or salespersons, or exempt from registration or licensing?

Yours truly

A handwritten signature in black ink, appearing to read "Jay Brummett", written over a horizontal line.

Jay Brummett
Chairman

CM: RRR# P 105 245 667

cc: Commission Members